Irwan bin Amat v Public Prosecutor

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COURT OF APPEAL (PUTRAJAYA) — CRIMINAL APPEAL NO B-05–57 OF 2009
AHMAD MAAROP, SULAIMAN DAUD AND BALIA YUSOF JJCA
12 OCTOBER 2011

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Criminal Law — Murder — Appeal against conviction and sentence — Intention or knowledge — Whether appellant had intention to cause death — Whether proved — Whether deceased death caused by or in consequence of appellant act — Whether prosecution case established beyond reasonable doubt — Whether appellant failed to create doubt in prosecution's case

C

Evidence — Circumstantial evidence — Conduct of appellant — Absconded from Country Homes — Arrested some two years later after a car chase — Whether cumulatively proved appellant's guilty mind — Evidence Act 1950 s 8

D

Evidence — Dying declaration — Statements by deceased — The answer 'Irwan' by deceased in response to PW6's question as to who caused the injuries — Whether attracted application of s 32(1)(a) of the Evidence Act 1950 — Whether statements made by deceased to brother relevant and admissible

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The appellant, Irwan, was accused of murdering the deceased, one Jibal, at the parking area between the Anggerik Block and the Cempaka Block, Country Homes ('the Country Homes'). At the trial in the High Court three eye witnesses testified that they saw the appellant stabbing the deceased. There was evidence of a dying declaration by the deceased. Further, there was evidence that the appellant disappeared from his residence at the Country Homes and was arrested only some two years later. The nature, extent and location of the injuries inflicted on the deceased as well as the type of weapon (a sharp instrument) used to inflict those injuries revealed by the evidence of PW14 and PW2, the surgeon who conducted the surgery on Jibal and the doctor who had Jibal under his care after the surgery, respectively, led the learned judge to the inevitable conclusion that the injuries which caused the deceased's death were inflicted with the intention of killing the deceased. The appellant however, contended that the deceased died not because of the appellant's act, but because of the act of other individual or individuals from the many persons involved in the fight. The sole issue before this court was whether the learned trial judge erred in rejecting the appellant's defence.

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Held, dismissing the appeal, affirming the conviction and sentence:

(1) It would be futile for the person who stabbed Jibal several times on the

abdomen with a sharp instrument causing multiple perforations on the small and large intentines, huge laceration on the left netroperitoneum and transection of both the right and left ureter in the circumstances of this case, to say on being accused, that he had no intention of killing Jibal. Indeed the angry utterance by Irwan, 'Awak ikut campur — saya bunuh kamu' as he plunged the sharp instrument into Jibal's abdomen was also evidence of his intention to kill Jibal. At the very least the injuries were caused with the intention of causing bodily injuries which would be sufficient in the ordinary course of nature to cause death (see para 9).

(2) This court agreed with the finding of the learned trial judge that the totality of the evidence of PW1, PW4 and PW5 — the eyewitnesses of the murder — proved that it was Irwan who stabbed Jibal on the abdominal area several times using a sharp instrument causing the latter's death (see para 10).

(3) The answer 'Irwan' by Jibal in response to PW6's question as to who caused the injuries, was admissible as a dying declaration under s 32(1)(a) of the Evidence Act 1950 ('Act'). The learned trial judge was right in admitting that evidence. The other piece of evidence which was relevant under s 8 of the Act, and was properly thrown into the scale by the learned trial judge was the evidence of PW11 and PW12 showing Irwan's conduct in absconding from the Country Homes. The evidence of PW12 revealed that some two years later, Irwan fled from the police when told to stop by the latter. Irwan was arrested after a car chase. This court agreed with the learned judge that that evidence was indicative of Jibal's guilty mind (see para 11).

(4) The conclusions of the learned judge that the prosecution had proved its case of murder against Irwan beyond reasonable doubt were based on his finding on the credibility or otherwise of the prosecution witnesses particularly PW1, PW4 and PW5, on one hand and that of Irwan on the other, in respect of which, his views as the trial judge was entitled to great respect. The appellate court is always slow to interfere in such findings of fact made by the learned judge. In order to reverse the decision of the learned trial judge on such matters, this court must, not merely entertain doubt whether his decision was right, but be convinced that it was wrong (see para 15).

[Bahasa Malaysia summary

Perayu, Irwan, dituduh membunuh si mati, Jibal, di kawasan letak kereta di antara Blok Anggerik dan Blok Cempaka, Country Homes ('Country Homes'). Ketika perbicaraan di Mahkamah Tinggi, tiga orang saksi yang melihat sendiri memberi keterangan bahawa mereka melihat perayu menikam si mati. Terdapat bukti perisytiharan mati si mati. Di samping itu, terdapat bukti bahawa perayu hilang dari kediamannya di Country Homes dan telah

ditangkap hanya kira-kira dua tahun kemudian. Sifat, tahap dan tempat kecederaan yang dikenakan ke atas si mati serta jenis senjata (instrumen tajam) yang digunakan untuk mengakibatkan kecederaan yang didedahkan oleh keterangan PW14 dan PW2, pakar bedah yang menjalankan pembedahan ke atas Jibal dan doktor yang menjaga Jibal selepas pembedahan, masing-masing, membawa Yang Arif hakim kepada kesimpulan yang tidak dapat dielakkan bahawa kecederaan yang menyebabkan kematian si mati telah dikenakan dengan niat untuk membunuh si mati. Perayu, walau bagaimanapun, menghujahkan bahawa si mati tidak mati kerana perbuatan perayu, tetapi kerana perbuatan individu atau individu-individu lain antara orang ramai yang terlibat dalam pergaduhan tersebut. Isu tunggal di hadapan mahkamah ini adalah sama ada Yang Arif hakim bicara telah terkhilaf dalam menolak pembelaan perayu.

Diputuskan, menolak rayuan, mengesahkan sabitan dan hukuman:

(1) Ia akan menjadi sia-sia untuk orang yang menikam ke atas abdomen Jibal beberapa kali dengan peralatan yang tajam, menyebabkan tebukan di beberapa tempat di usus-usus kecil dan besar, luka besar pada netroperitoneum kiri dan neutrino transection kedua-dua saluran kencing kanan dan kiri dalam hal keadaan kes ini, untuk mengatakan apabila dituduh, bahawa dia tidak mempunyai niat untuk membunuh Jibal. Sememangnya lafaz kemarahan oleh Irwan, 'Awak ikut campur — saya bunuh kamu' ketika dia menghunus instrumen tajam tersebut ke dalam abdomen Jibal juga bukti mengenai niatnya untuk membunuh Jibal. Sekurang-kurangnya, kecederaan disebabkan dengan niat menyebabkan kecederaan tubuh badan yang mencukupi dalam perjalanan biasa untuk menyebabkan kematian (lihat perenggan 9).

(2) Mahkamah ini bersetuju dengan dapatan Yang Arif hakim bicara bahawa keseluruhan keterangan PW1, PW4 dan PW5 — saksi-saksi yang melihat sendiri pembunuhan — membuktikan bahawa Irwan yang menikam Jibal di kawasan abdomen beberapa kali dengan menggunakan instrumen yang tajam menyebabkan kematiannya (lihat perenggan 10).

(3) Jawapan 'Irwan' oleh Jibal dalam respons kepada soalan PW6 yang menyebabkan kecederaan, adalah diterima sebagai perisytiharan mati di bawah s 32(1)(a) Akta Keterangan 1950 ('Akta'). Yang Arif hakim bicara adalah betul dalam menerimanya sebagai bukti. Bukti lain yang relevan di bawah s 8 Akta dan telah dimasukkan dengan betul ke dalam skala oleh hakim bicara adalah keterangan PW11 dan PW12 yang menunjukkan kelakuan Irwan yang melarikan diri dari Country Homes. Keterangan oleh PW12 mendedahkan bahawa kira-kira dua tahun kemudian, Irwan melarikan diri dari polis apabila diberitahu untuk berhenti oleh mereka. Irwan telah ditangkap selepas kejar-mengejar. Mahkamah ini bersetuju

dengan Yang Arif hakim bahawa keterangan tersebut yang telah menunjukkan minda bersalah Jibal (lihat perenggan 11).

(4) Kesimpulan Yang Arif hakim bahawa pihak pendakwaan telah membuktikan kes pembunuhan terhadap Irwan melampaui keraguan yang munasabah adalah berdasarkan dapatan kredibiliti atau sebaliknya saksi-saksi pendakwaan terutamanya PW1, PW4 dan PW5, di satu bahagian dan Irwan pada lain, yang berkenaan dengannya, pandangan beliau sebagai hakim bicara mempunyai hak untuk penghormatan tinggi. Mahkamah Rayuan sering lambat untuk campur tangan dalam dapatan apa-apa fakta yang dibuat oleh Yang Arif hakim. Untuk mengakas keputusan Yang Arif hakim bicara tentang perkara-perkara tersebut, mahkamah ini mestilah, bukan semata-mata mempunyai keraguan sama ada keputusannya adalah betul tetapi mestilah yakin bahawa ia salah (lihat perenggan 15).]

Notes

For cases on appeal against conviction and sentence, see 4 *Mallal's Digest* (4th Ed, 2010 Reissue) paras 1341–1343.

For cases on circumstantial evidence, see 7(1) *Mallal's Digest* (4th Ed, 2011 Reissue) paras 771–836.

For cases on dying declaration in general, see 7(1) *Mallal's Digest* (4th Ed, 2011 Reissue) paras 1512–1542.

Cases referred to

Andy bin Bagindah v PP [2000] 3 MLJ 644, CA (refd)
Dato Mokhtar Hashim v PP [1983] 2 MLJ 232, CA (refd)
Kumaran Sapani v PP [2011] 3 CLJ 251, FC (refd)
Lai Kim Hon & Ors v PP [1981] 1 MLJ 84, FC (refd)
Mohamed Alias v PP [1983] 2 MLJ 172 (refd)
PP v Datuk Harun Idris (No 2) [1977] 1 MLJ 15 (refd)
PP v Megat Shahrizat Megat Shahrur [2011] 5 CLJ 608, CA (refd)
Tan Buck Tee v PP [1961] 1 MLJ 176 (refd)
Tham Kei You v PP [1970] 1 LNS 159, HC (refd)

Legislation referred to

Evidence Act 1950 ss 8, 32(1)(a)

Appeal from: Criminal Trial No 45–63 of 2006 (High Court, Shah Alam)

Bernard George (Tay, Bernard & Cheong) for the appellant.
Tengku Amir Zaki bin Tengku Abdul Rahman (Deputy Public Prosecutor, Attorney General's Chambers) for the respondent.

Ahmad Maarop JCA:

INTRODUCTION

[1] The appellant — Irwan bin Amat ('Irwan') was accused of murdering of one Jibal bin Salim ('Jibal') at about 9.45pm on 16 October 2003 at the parking area between the Anggerik Block and the Cempaka Block, Country Homes ('the Country Homes'), Rawang, Selangor. In the trial in the High Court three eye — witnesses testified that they saw Irwan stabbing Jibal. There was evidence of a dying declaration by Jibal. There was evidence showing Irwan disappearing from his residence at the Country Homes and was arrested only some two years later. Irwan denied killing Jibal. Was the learned trial judge right in finding Irwan guilty of the murder, convicting him and sentencing him to death?

THE PROSECUTION'S CASE

[2] On the night in question at about 8pm, Muhammad Yan bin Abdullah (PW1), a resident of the Dahlia Apartment, Cempaka Block, at the Country Homes was talking to his friend Mohd Noor on the ground floor of the apartment at a place between the Cempaka and the Kekwa Blocks, when a group of people armed with wood, parang and axes attacked Irwan who was having conversation with two other persons about 10 meters away from PW1. Irwan managed to escape. PW1 telephoned the police, as a result of which Sgt Ahmad Latfi bin Hamzah (PW3) came to the scene to investigate about five minutes later. Having found nothing, PW3 returned to his police post located at the Country Homes. PW1 and his friend then moved to a stall near the Cempaka Block for a drink. While he was having his drink at the stall, PW1 saw several cars entering the parking area. A group of people including Irwan came out of the cars armed with *parangs*, samurai swords, knives and wood. PW1 could see Irwan and the group as the scene was lighted by the street lights as well as lights from the food stalls. The group proceeded towards the Anggerik Block and then pandemonium broke out. PW1 saw three persons falling down. PW1 saw Irwan dragging out one of the three persons who had fallen. Irwan sat on the body of that person and stabbed him repeatedly on the stomach using a sharp weapon. PW1 heard Irwan saying, 'Awak ikut campur — saya bunuh kamu' as he was stabbing that person. PW1 identified the person stabbed as Jibal. Later, Irwan and the group of persons who came to the scene with him ran away. PW1 telephoned PW3 again and informed the latter of the fight. PW3, who received the telephone call at about 11pm rushed to the scene. Jibal was then rushed to the Selayang Hospital.

[3] At the Selayang Hospital, immediate surgery was conducted on Jibal.

According to Dr Taufiq bin Abdullah (PW14), the surgeon who conducted the surgery on Jibal together with Dr Lim Kin Foong, on external examination, he found the following injuries on Jibal:

(a) nine stab wounds on the anterior of the abdomen;

(b) laceration wound on the right cheek measuring 5cm in length and 15cm across the front neck;

(c) sub-mandibular laceration wound — 9cm; and

(d) laceration wound along the left posterior axillary — 4cm above the waist.

[4] On internal examination, PW14 found the following injuries:

(a) multiple perforations of the small bowel (intestines) ranging from 0.5cm to 1.5cm caused by the stab wounds. There were more than 15 perforations;

(b) multiple small intestines mesenteric laceration;

(c) two perforations at the sigmoid colon (large intestines) measuring 1cm and 0.6cm respectively;

(d) huge laceration of the left netroperitoneum 3cm;

(e) both the right and left ureter partially transected at midureter level with urine leak; and

(f) active oosing from retro peritoneum.

[5] According to PW14, the injuries inflicted on Jibal, (which in PW14's view were caused by sharp instrument), especially injuries to the retroperitoneum areas had caused him to lose massive amount of blood — which would lead to hypovolumic shock resulting in reduced perfusion to the organs. This would lead to acidosis, coagulapathy and multi organ failure. PW14 opined that although septicaemia also contributed to Jibal's death — in that germs from the faeces had entered the blood, nevertheless even without septicaemia, death would have been inevitable because of the massive loss of blood. In PW14's view, the injuries inflicted on Jibal were sufficient in the ordinary cause of nature to cause his death. PW14 also testified that no post-mortem was done on Jibal because the cause of death had been established from the surgery and this, according to PW14 was an accepted practice.

[6] Dr Mohd Hamdan bin Abd Wahab (PW2) who had Jibal under his care after the surgery, testified that Jibal succumbed to his injuries at about 11.28pm on 17 October 2003. In the medical report (P3) prepared by him, PW2 certified Jibal's death to be due to coagulopathy secondary to massive blood loss secondary to multiple stab wounds.

[7] On 17 October 2003, at about 12.30am Asp Mohd Fazley bin Ab Rahman (PW11) who was informed of the fight at the Country Home, rushed to Irwan's house at no No 02-03, Kekwa Block of the Country Homes with a police team. Irwan was then the suspect in the incident. PW11 and his team broke open the door and entered the house. There was nobody in the house. From the master bedroom PW11 obtained three photographs and particulars of Irwan. On 20 October 2003 Asp Navamani a/l Chellapen (PW13) the investigation officer of the case circulated Irwan's photograph in the police wanted list.

[8] On 25 October 2005 at about 1.10am C/Insp Mohd Suhaimi Sadimon (PW12) and three policemen were on a crime prevention round in the police patrol car at the Taman Rashna area Jalan Batu 3 Klang. He noticed a Proton Aeroback No JGV 9720 being driven in a suspicious manner — it made U turns 2–3 times. PW12 drew level with the said Proton, wound down the screen of the patrol car window and told the driver of the Proton to stop. The driver did not stop the car, but sped off instead. PW12 gave chase. After a one kilometre chase PW12 managed to stop the Proton Aeroback and apprehended Irwan who was driving the car. Upon enquiries PW12 found that Irwan was wanted in the incident at the Country Homes.

[9] From the evidence of Kamal bin Salim (PW6) Jibal's brother, PW2 and PW14, the learned trial judge was satisfied that Jibal's identity and the fact of his death had been proven. On the evidence of PW2 and PW14, the learned judge found the cause of Jibal's death to be coagulapathy due to massive blood loss due to stab wounds. The nature, extent and location of the injuries inflicted on Jibal as well as the type of weapon (sharp instrument) used to inflict those injuries revealed by the evidence of PW14 and PW2, led the learned judge to the inevitable conclusion (and in our view rightly) that the injuries which caused Jibal's death were inflicted with the intention of killing Jibal. In our view, it would be futile for the person who stabbed Jibal several times on the abdomen with a sharp instrument causing multiple perforations on the small and large intentines, huge laceration on the left netroperitoneum and transection of both the right and left ureter in the circumstances of this case, to say on being accused, that he had no intention of killing Jibal. Indeed the angry utterance by Irwan, 'Awak ikut campur — saya bunuh kamu' as he plunged the sharp instrument into Jibal's abdomen is also evidence of his intention to kill Jibal. As the learned judge opined, at the very least the injuries were caused with the intention of causing bodily injuries which would be sufficient in the ordinary course of nature to cause death (see *Tan Buck Tee v Public Prosecutor* [1961] 1 MLJ 176, *Kumaran Sapani v Public Prosecutor* [2011] 3 CLJ 251, *Tham Kei You v Public Prosecutor* [1970] 1 LNS 159, *Public Prosecutor v Megat Shahrizat Megat Shahrur* [2011] 5 CLJ 608).

[10] The next question before the court was whether Jibal's death was caused by or in consequence of Irwan's act. In this regard as found by the learned trial judge, PW1's testimony as to what happened on the day in question was corroborated by the evidence of the two other eye-witnesses — Abdil bin Zul (PW4) and his wife Jambon bin Haddmi (PW5). PW1, PW4 and PW5 had positively identified Irwan in the identification parades held by the police. Subsequently, they also identified Irwan in the court when they testified. Indeed, according to PW1 and PW5 they knew Irwan before the incident which was not surprising as Irwan was one of the residents of the Country Homes. PW4 and PW5 were residents of Anggerik Block of the Country Homes. On the day in question at about 10pm PW4 and PW5 were having their drink at a stall located between the Kekwa Block, Anggerik Block and another block. PW4 testified that as he was walking back to his house from the stall, he heard sound of person falling down. He turned back and saw Irwan stabbing Jibal and another person (Abdin) with a sword several times. Irwan then also attacked PW4 with the same sword causing injuries on PW4's arms. PW5 testified that she saw Irwan stabbing Jibal with a knife many times on the tatter's body. Then Irwan chased her and PW4. PW4 told PW5 to run away. PW5 also saw Irwan attacking PW4 with a knife. In evaluating the evidence of the three eyes witnesses, the learned trial judge considered the contradictions in their evidence with regard to matters such as the time of the incident and the type of weapon used by Irwan. Having done so he found that the contradictions did not affect the essence of their evidence. He accepted their evidence as credible, which he was entitiled to do as a trial judge (see *Mohamed Alias v Public Prosecutor* [1983] 2 MLJ 172, *Public Prosecutor v Datuk Harun Idris (No 2)* [1977] 1 MLJ 15, *Lai Kim Hon & Ors v Public Prosecutor* [1981] 1 MLJ 84, *Dato Mokhtar Hashim v Public Prosecutor* [1983] 2 MLJ 232), and concluded that the totality of the evidence of PW1, PW4 and PW5 proved that it was Irwan who stabbed Jibal on the abdominal area several times using a sharp instrument causing the tatter's death. We agree.

[11] The evidence against Irwan did not end there. There was evidence from Jibal's brother Kamal bin Salim (PW6) resident of the Anggerik Block of the Country Homes. On being informed by one Zamran that Jibal was attacked, PW6 went to the scene where he saw Jibal lying on the road bleeding from the neck and stomach. At that time Jibal was still alive. PW6 asked Jibal, 'kenapa kena tikam?', Jibal said 'tidak tahu puncanya'. PW6 asked Jibal who caused the injuries. Jibal replied 'Irwan'. This evidence was unchallenged by the defence. PW6 knew Irwan one year before the incident and he identified Irwan in court. The answer 'Irwan' by Jibal in response to PW6's question as to who caused the injuries, was admissible as a dying declaration under s 32(1)(a) of the Evidence Act 1950. The learned trial judge was right in admitting that evidence. The other piece of evidence which was relevant under s 8 of the Evidence Act 1950, and was properly thrown into the scale by the learned trial judge was the evidence of PW11 and PW12 showing Irwan's conduct in absconding from the

Country Homes. PW12's evidence revealed that some two years later, Irwan fled from the police when told to stop by the latter. Irwan was arrested after a car chase. That evidence in the learned's judge view, was indicative of Jibal's guilty mind. We agree with him.

[12] In the light of all the evidence which we have set out and for reasons which we have given, we hold that the learned judge was right when he found that the prosecution had proved a prima facie case of murder as charged against Irwan.

DECISION

[13] In his submission before us learned counsel for Irwan informed us that he was not attacking the finding of prima facie case made by the learned trial judge. Learned counsel sole complaint before us was that the learned trial judge erred in rejecting Irwan's defence. He submitted that Irwan's evidence was consistent on what actually happened on the day in question. He contended that the irrefutable evidence established that on 16 October 2003 there was a big fight at the Country Homes involving many people and that Jibal was one of the victims fatally injured in the fight. He argued that Jibal died not because of Irwan's act, but because of the act of other individual or individuals from the many persons involved in the fight. This bring us to Irwan's defence. Irwan gave evidence on oath. The substance of his evidence is clearly set out in the judgment of the learned trial judge and we will not repeat it. As rightly found by the learned trial judge, Irwan's evidence was diametrically opposed to that of the eye witnesses — PW1, PW4 and PW5. The essence of Irwan's defence was denial. He admitted that he had resided in the Kekwa Block of the Country Home four months before the incident. He admitted being present at the scene at the material time and in fact he claimed he himself and his friend Om were attacked by a group of Indonesians and Fillipinos resulting in injuries to his stomach. However, Irwan said he did not know Jibal. He admitted that he was involved in the fight but denied killing Jibal. In fact he said he did not stab any body. He said he had taken his wife and child to Puchong to save them.

[14] We found that the learned trial judge had adequately considered Irwan's defence and tested it with the evidence of the prosecution witnesses in particular PW1, PW4 and PW5. In this regard the learned judge found that PW1's evidence that after the first fight, (in which Irwan was attacked), Irwan returned to the scene with several other persons was never challenged by the defence. The learned judge found that PW4's evidence that he was attacked by Irwan and PW5's evidence that Irwan attacked PW4 were also never challenged by the defence. Those were among the matters which were taken into account by the learned judge when he deliberated on Irwan's evidence. The learned judge found that there were two fights on the night in question. In the first,

A Irwan was attacked which triggered the second attack in which Irwan together with several persons who were armed with wood, *parangs*, swords and knives returned to the scene in several cars and attacked Jibal and PW4. In the end the learned judge found that Irwan's evidence had not created any doubt on the prosecution's case. He concluded that the prosecution had proved its case of
B murder against Irwan beyond reasonable doubt.

[15] The conclusions of the learned judge as aforesaid were based on his finding on the credibility or otherwise of the prosecution witnesses particularly PW1, PW4 and PW5, on one hand and that of Irwan on the other, in respect
C of which, his views as the trial judge is entitled to great respect. The appellate court is always slow to interfere in such findings of fact made by the learned judge (see *Andy bin Bagindah v Public Prosecutor* [2000] 3 MLJ 644). In order to reverse the decision of the learned trial judge on such matters we must, not merely entertain doubt whether his decision was right, but be convinced that it
D was wrong (see *Dato Mokhtar bin Hashim v Public Prosecutor* [1983] 2 MLJ 232 at p 275). Having carefully scrutinised the evidence on record which appears to us overwhelming and having carefully examined the judgment of the learned trial judge, and for reasons which we have set out, we are not convinced that his decision was wrong.
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[16] In the result Irwan's appeal is dismissed. The conviction and sentence on him are affirmed.

F *Appeal dismissed, conviction and sentence affirmed.*

Reported by Ashgar Ali Ali Mohamed

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